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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/782,650

02/19/2004

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10/22/2007

EXAMINER

QUINN, COLLEEN M

ART UNIT

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3634

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/782,650	Applicant(s) ROSS, ROBERT N.	
	Examiner Colleen M. Quinn	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,8,10,12-15,17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,8,10,12-15,17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2, 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guerrero (US 4,004,501) alone. Guerrero discloses a holder (figure 1) capable of supporting pita pockets, tacos, and any likewise shaped items (4) in an upright position comprising an outer surface (outer surface of 1) wherein a portion of said outer surface and related inner surface is a segment of a substantially thin walled cylinder (bottom of troughs 2) having a curvilinear geometry about an axis, and a stable base (bottom edge of 1), established by contact points that lie on a common base plane wherein said contact points are positioned on opposing edge portions of said outer surface, and item receptacle means (2) positioned within said outer surface sized slightly wider than said item to provide side support and also provides bottom support of said item orientating the length of said item generally transverse to said axis, and handle means (unnumbered handle best seen in figure 1) to carry said holder with said item installed, and also an interior volume (unnumbered space underneath the receptacle means as best seen in Figure 3) accessible from an underside open expanse between said opposing edge portions, allowing multiple said holders to be stacked one upon the other wherein said receptacle means comprises a single or plurality of receptacles positioned in said outer surface for supporting multiples of said item (figure 3), wherein said handle

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means comprises a minimum of one extension from the topside of the outer surface (figure 3) and the holders are formed from a layered sheet material (column 2, lines 35-39) and capable of being stacked atop one another.

Regarding the newly inserted dimension of "less than 0.040 inch thick" the applicant is referred to MPEP 2144.04 IV A. *Changes in Size/Proportion* in which it is explained that mere scaling of dimensions of prior art is not patentable. Consequently, the applicant's inclusion of the specific dimension of the taco holder wall is merely design choice and it would have been obvious to one of ordinary skill in the art to size the taco holder to appropriate dimensions for its use.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guerrero as applied to claims 1, 2 5 and 10 above, and further in view of Baze (US 5,628,245). Guerrero fails to disclose the receptacle means comprising a single or plurality of apertures penetrating the outer surface.

However, Baze teaches a taco holder (figure 1) comprising receptacle means (1,2) with an outer surface (3) wherein the receptacle means comprise a plurality of apertures (4), providing a taco holder that allows for uniformly supporting and heating of the tacos (column 2, lines 11-13).

Therefore, it would have been obvious to one skilled in the art, to provide the receptacle means of Guerrero with the apertures taught by Baze in order to provide a taco holder that uniformly supports and heats tacos.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guerrero as applied to claims 1, 2 5 and 10 above, and further in view of Gilfert et al. (US 6,302,671). Guerrero fails to disclose stiffening means formed into the holder.

However, Gilfert et al. disclose an item holder (figure 1) having an outer surface comprising receptacle means (26) wherein the holder comprises stiffening means (34) formed into the holder to eliminate sagging or caving (column 4, lines 53-56).

Therefore, it would have been obvious to one skilled in the art to provide the holder of Guerrero with the stiffening means taught by Gilfert et al. in order to prevent sagging or caving of the holder when an item is placed in the receptacle.

Claims 12-15, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guerrero in view of Gilfert et al. as advanced above.

Guerrero discloses a holder (figure 1) for supporting pita pockets, tacos, and any likewise shaped items (4) in an upright position comprising an outer surface (outer surface of 1) wherein a portion of said outer surface and related inner surface is a segment of a substantially thin walled cylinder (bottom of troughs 2) having a curvilinear geometry about an axis, and a stable base (bottom edge of 1), established by contact points that lie on a common base plane wherein said contact points are positioned on opposing edge portions of said outer surface, and item receptacle means (2) positioned within said outer surface sized slightly wider than said item to provide side support and also provides bottom support of said item orientating the length of said item generally transverse to said axis, and handle means (unnumbered handle best seen in figure 1) to

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carry said holder with said item installed, and also an interior volume (unnumbered space underneath the receptacle means as best seen in Figure 3) accessible from an underside open expanse between said opposing edge portions, allowing multiple said holders to be stacked one upon the other wherein said receptacle means comprises a single or plurality of receptacles positioned in said outer surface for supporting multiples of said item (figure 3), wherein said handle means comprises a minimum of one extension from the topside of the outer surface (figure 3) and the holders are formed from a layered sheet material capable of being placed in an oven(column 2, lines 35-39) and capable of being stacked atop one another. Guerrero fails to disclose stiffening means formed into the holder.

However, Gilfert et al. disclose an item holder (figure 1) having an outer surface comprising receptacle means (26) wherein the holder comprises stiffening means in the form of tapering sidewall edge features (32) intended to support the receptacle means (column 4, lines 43-45).

Therefore, it would have been obvious to one skilled in the art to provide the holder of Guerrero with the tapered side wall stiffening means taught by Gilfert et al. in order to prevent sagging or caving of the holder when an item is placed in the receptacle.

Response to Arguments

Applicant's arguments filed August 20th, 2007 have been fully considered but they are not persuasive.

Applicant argues that the prior art of Guerrero cannot sufficiently hold pita pockets. The examiner would like to note that the applicant is not claiming a pita pocket, and only a holder that is capable of holding a pita pocket, which the prior art of Guerrero is very capable of doing. The applicant additionally argues that a holder capable of supporting a pita pocket would need a relief space for the larger size of a pita pocket. However, the examiner disagrees since not only do pita pockets come in a variety of sizes (some the same size as a taco shell) but also because the prior art of Guerrero is perfectly capable of holding a pita pocket, and is also capable of being scaled up or down in size depending on the desired size of the shell to be stored.

Applicant argues that the apertures of ~~Braze~~^{cm2} do not offer the same "functional receptacle geometry" as the apertures of the applicant's claimed invention. However, the applicant is only claiming that there are apertures in the surface of the shell holder, and that is clearly anticipated by ~~Braze~~^{cm2}. Though the apertures of ~~Braze~~^{cm2} may not serve the purpose of the applicant's claimed apertures, the broad claim language and lack of any structural limitations further than a "plurality of apertures" in the surface of the holder fail to overcome the prior art of record.

Applicant argues that the prior art does not teach the specific dimensions as the applicant's currently amended claims teach. However, as explained above, mere scaling up or down of prior art is merely an obvious design and it is understood that one

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of ordinary skill in the art would construct the holder of Guerrero to the dimensions required for its specific use.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571) 272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMQ
10/16/07


BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER